

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
The Electric Power Board and City of Wilson)	WCB Docket Nos. 14-115 and 14-116
Petitions, Pursuant to Section 706 of the)	
Telecommunications Act of 1996, Seeking)	
Preemption of State Laws Restricting the)	
Deployment of Certain Broadband Networks)	

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September 29, 2014

REPLY COMMENTS OF MIDDLE CLASS ACTION FUND

The Middle Class Action Fund hereby files these comments in response to the Federal Communication Commission's ("Commission") establishment of the pleading cycle, released July 28, 2014, in the above-captioned proceeding.

The Middle Class Action Fund has reviewed the petition of the Electric Power Board of Chattanooga ("EPB") and Wilson County, North Carolina (collectively, the "Petitions") and urges the Commission to support these Petitions and follow the directive of the United States Congress contained in Section 706 of the Telecommunications Act to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans" [*emphasis added*] by removing barriers to infrastructure investment that are thwarting this progress. Throughout these comments I will discuss primarily the petition of EPB, but intend these comments to apply in support of both Petitions.

Ease of access to telecommunications services has always been greatest in the urban areas, as telecommunications providers naturally develop business where the greatest possibility of revenue exists. For these services, those areas are the ones in which the greatest concentration of population is found. As a result of the growth of telecommunications advancement over the last two decades and the economically-driven nature of the footprint of progress, we have witnessed a great divide in the educational opportunities that currently exist between urban and rural areas. Similarly, and in particular since the Great Recession of this past decade, we have witnessed a divide in the types of communities that have been able to make economic progress relying on entrepreneurial activity, technological advancements, and job growth. Rural areas simply do not

have access to advanced capability critical infrastructure treasured by more populated areas, and as a result, they have fallen behind.

Section 706 of The Telecommunications Act of 1996 (“Section 706”) sought to level this long-standing imbalanced playing field when Congress gave the Commission the explicit power to ensure that the free flow of opportunity in commerce was not restricted to those who desired access to it. The subsequent updates to the definition of “advanced telecommunications capability” by the Commission since that time acknowledge the rapid development of advanced capabilities and the need for Section 706 in practice by the Commission to keep pace with the intent of Congress in having all Americans have access to such services. Unfortunately, certain state laws have thus far prevented the ubiquitous delivery of such services to all Americans by instead establishing a state-mandated safeguard for providers who are averse to competition.

Tennessee recognized the intent behind Section 706 when it enacted Section 401¹ in 1997 which allowed municipal providers to provide telecommunications services throughout the state of Tennessee. There must have been quite a stir among the traditional providers, however, because soon thereafter EPB applied for, and obtained, its certificate of convenience and necessity to do so, but was suddenly limited to its electric service area for the delivery of telecommunications services.² This territorial restriction imposed on EPB was then applied statewide through legislation prohibiting municipal providers from providing Internet and video services beyond their electric service areas.³

This type of state-imposed control on wealth and “improper contribution” influenced by state legislative interests was described by James Madison when he penned Federalist Paper No. 42, therein describing the rationale behind federal regulation of trade and commerce among the several states (i.e., the Commerce Clause of the United States Constitution). He wrote, “We may be assured by past experience, that such a practice would be introduced by future contrivances; and both by that and a common knowledge of human affairs, that it would nourish unceasing animosities, and not improbably terminate in serious interruptions of the public tranquility.” We respond that not only are these improper hindrances on commerce affecting the public tranquility, but indeed are affecting middle class Americans directly in their pocketbooks and prohibiting the kind of advancement envisioned for America by Congress in enacting Section 706.

The Middle Class Action Fund was formed to give middle class Americans a voice in these types of debates. As others in this comment process have noted, the average consumer is often not granted a ‘seat at the table’ when it comes to forming policy decisions in Washington. Fortunately, much good can be done as the result of well-thought-out legislation such as Section 706 and the various instances Congress and the Commission have taken to ensure broad deployment of available technologies.

¹ Tenn. Code. Ann. § 7-52-401, *et seq.*

² See Exhibit 5 to EPB Petition Pursuant to Section 706 of the Telecommunications Act of 1996; Timeline of EPB’s Development and Deployment of Gigabit Fiber Network

³ Tenn. Code. Ann. § 7-52-601, *et seq.*

All Americans deserve to have the opportunity to raise their standard of living and contribute to the economic growth of this country, their own communities, and their families by not being denied access to what the majority of this country's population now considers a necessary component of life in the 21st century – high-speed Internet access. EPB offers Gigabit Internet access, the kind of service that can be a boon to rural communities trying to attract new businesses, and to small businesses trying to gain a foothold in this New Economy. We urge the Commission to support the Petitions and remove the state-imposed barriers to competition by municipal providers in the interest of all Americans, and as directed by Congress.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'AK', written over a faint circular stamp or watermark.

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